

1 Steven H. Winterbauer, WSBA #16468
Nate Bailey, WSBA #40756
Winterbauer & Diamond PLLC
2 1200 Fifth Avenue, Suite 1700
Seattle, WA 98101
3 (206) 676-8440
mail@winterbauerdiamond.com

4
5
6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 WAYNE R. BLACK,

8 Plaintiff,

9 v.

10 GRANT COUNTY PUBLIC
UTILITY DISTRICT; CHRIS
HEIMBIGNER,

11 Defendants.

No. 2:17-cv-00365-RMP

**DEFENDANTS' ANSWER TO
COMPLAINT**

12 **I. ANSWER**

13 In Answer to the Complaint ("Complaint") filed by Plaintiff Wayne
14 R. Black ("Plaintiff"), Defendants Public Utility District No. 2 of Grant
15 County (d/b/a Grant County Public Utility District) (the "District") and
16 Chris Heimbigner (collectively, "Defendants") answer as follows:

17 1. Admit that Plaintiff is a 59-year-old citizen of the State of
18 Washington and a resident of Grant County Washington, and are without
19 sufficient information to admit or deny the remaining allegations in
20 paragraph 1 and, therefore, deny them.

1 2. Admit that Defendant Heimbigner is employed by the District
2 as the Line Superintendent and is a citizen of the State of Washington, and
3 deny the remaining allegations in paragraph 2.

4 3. Admit that the District is a municipal corporation that is subject
5 to regulation by the State of Washington and headquartered at 30 C St SW,
6 Ephrata, WA 98823, and deny the remaining allegations in paragraph 3.

7 4. Admit the allegations in paragraph 4.

8 5. Admit the allegations in paragraph 5.

9 6. Admit and deny the allegations re-alleged in paragraph 6 as set
10 forth above.

11 7. Admit that the District received a notice-of-claim letter from
12 Plaintiff's attorney on or about April 4, 2017; deny the District did nothing
13 other than sign for the letter; and are without sufficient information to admit
14 or deny the remaining allegations in paragraph 7 and, therefore, deny them.

15 8. Admit that the District received a copy of a Right to Sue letter
16 from the EEOC dated July 31, 2017 and addressed to Plaintiff; and are
17 without sufficient information to admit or deny the remaining allegations in
18 paragraph 8 and, therefore, deny them.

19 9. Admit the allegations in paragraph 9.

1 10. Are without sufficient information to admit or deny the
2 allegations in paragraph 10 and, therefore, deny them.

3 11. Admit that Plaintiff periodically received Employee
4 Recognition awards from the District; affirmatively state that Plaintiff's
5 personnel file speaks for itself; and are without sufficient information to
6 admit or deny the remaining allegations in paragraph 11 and, therefore, deny
7 them.

8 12. Admit that Plaintiff placed first in the District's 2017 Pole Top
9 Rescue competition, competed in the 2017 state competition, earned the
10 privilege of attending and participating in the 2017 Kansas City International
11 Lineman Rodeo as a judge, and earned the privilege of participating in the
12 Kansas City International Lineman Rodeo on two other occasions; and are
13 without sufficient information to admit or deny the remaining allegations in
14 paragraph 12 and, therefore, deny them.

15 13. Admit that Plaintiff was awarded the bid for the Anticipated
16 Temporary Line Crew Foreman effective March 12, 2012, and was awarded
17 the bid for Line Crew Foreman effective July 5, 2013, and deny the
18 remaining allegations in paragraph 13.

19 14. Admit the allegations in paragraph 14.
20
21

1 15. Admit that the District utilizes a bid process in relation to
2 certain positions, that certain positions require specific qualifications, and
3 that the District generally has the discretion to make selections among
4 candidates, and deny the remaining allegations in paragraph 15.

5 16. Admit that the District has a Discipline & Corrective Action
6 Policy, which document speaks for itself; and deny the remaining allegations
7 in paragraph 16.

8 17. Admit that in September 2016, Plaintiff bid for a Supervising
9 Foreman position that became open upon the former Supervising Foreman's
10 retirement; that the Collective Bargaining Agreement ("CBA") governs the
11 bidding process for the Supervising Foreman position, and speaks for itself;
12 that the District received bids for the Supervising Foreman position from
13 two candidates with at least three years of experience as a foreman, both of
14 whom were over 40 years of age and one of whom was Plaintiff; are without
15 sufficient information to admit or deny that both candidates with more than
16 three years of experience as foremen were members of the Church of Jesus
17 Christ of Latter-Day Saints and, therefore, deny it; and deny the remaining
18 allegations in paragraph 17.

19 18. Admit that Plaintiff was demoted effective October 7, 2016,
20 and deny the remaining allegations in paragraph 18.

1 19. Admit that the District selected a candidate for the Supervising
2 Foreman position who was under 40 years of age and did not have three
3 years of experience as a foreman; are without sufficient information to admit
4 or deny that the successful candidate was not a member of the Church of
5 Jesus Christ of Latter-Day Saints and, therefore, deny it; and deny the
6 remaining allegations in paragraph 19.

7 20. Admit that the selected Supervising Foreman candidate
8 currently participates as commissioner of a fantasy football league during his
9 personal, non-work time, and deny the remaining allegations in paragraph
10 20.

11 21. Admit that Plaintiff was disciplined for his failure to follow
12 instructions related to hanging clearance tags and for selling District
13 property, and deny the remaining allegations in paragraph 21.

14 22. Admit that Plaintiff bid for a Dispatch Trainee position, which
15 is subject to the District's right of selection; he was the most senior bidder;
16 and he was not selected for an interview; and deny the remaining allegations
17 in paragraph 22.

18 23. Admit that one of the individuals selected for the Dispatch
19 Trainee position was a qualified lineman under 40 years of age and that the
20
21

1 other individual selected was a former HVAC employee; and deny the
2 remaining allegations in paragraph 23.

3 24. Deny that Defendants have been malicious with intent to harm,
4 discriminate against, or target Plaintiff based on any protected characteristic,
5 and are without sufficient information to admit or deny the remaining
6 allegations in paragraph 24 and, therefore, deny them.

7 **II. CAUSES OF ACTION**

8 24. [sic] Admit and deny the allegations re-alleged in the second
9 paragraph 24 as set forth above.

10 25. Admit the allegations in paragraph 25.

11 26. Admit that Defendant Heimbigner is an employee of the
12 District and holds the position of Line Superintendent, and are without
13 sufficient information to admit or deny the remaining allegations in
14 paragraph 26 and, therefore, deny them.

15 27. Admit the allegations in paragraph 27.

16 28. Admit, on information and belief, that Plaintiff was the oldest
17 bidder for the Dispatch Trainee position for which he applied, and deny the
18 remaining allegations in paragraph 28.

1 29. Admit that Plaintiff was not selected for the Supervising
2 Foreman position referenced above, and deny the remaining allegations in
3 paragraph 29.

4 30. Deny the allegations in paragraph 30.

5 31. Deny the allegations in paragraph 31.

6 32. Deny the allegations in paragraph 32.

7 33. Deny the allegations in paragraph 33.

8 34. Deny the allegations in paragraph 34.

9 35. Admit that age is not a bona fide occupational qualification of
10 the lineman position, and deny the remaining allegations in paragraph 35.

11 36. Deny the allegations in paragraph 36.

12 37. Deny the allegations in paragraph 37.

13 38. Admit and deny the allegations re-alleged in paragraph 38 as set
14 forth above.

15 39. Admit the allegations in paragraph 39.

16 40. Admit that Defendant Heimbigner is an employee of the
17 District and holds the position of Line Superintendent, and are without
18 sufficient information to admit or deny the remaining allegations in
19 paragraph 40 and, therefore, deny them.
20
21

1 41. Are without sufficient information to admit or deny the
2 allegations in paragraph 41 and, therefore, deny them.

3 42. Deny the allegations in paragraph 42.

4 43. Admit that Plaintiff was not selected for the Supervising
5 Foreman position referenced above, and deny the remaining allegations in
6 paragraph 43.

7 44. Deny the allegations in paragraph 44.

8 45. Deny the allegations in paragraph 45.

9 46. Deny the allegations in paragraph 46.

10 47. Deny the allegations in paragraph 47.

11 48. Deny the allegations in paragraph 48.

12 49. Admit that religious beliefs, affiliation, and practice are not
13 bona fide occupational qualifications of any position at the District, and are
14 without sufficient information to admit or deny the allegation regarding
15 Plaintiff's status as a member of the Church of Jesus Christ of Latter-Day
16 Saints and, therefore, deny it, and deny the remaining allegations in
17 paragraph 49.

18 50. Deny the allegations in paragraph 50.

19 51. Deny the allegations in paragraph 51.

1 **III. PRAYER FOR RELIEF**

2 Defendants deny that Plaintiff is entitled to any of the relief set forth
3 in the Prayer for Relief, specifically including without limitation the
4 allegations in paragraphs 1 through 5.

5 **IV. DEFENSES AND AFFIRMATIVE DEFENSES**

6 By way of further answer, Defendants state the following defenses
7 and affirmative defenses:

8 1. **Failure to state a claim.** The Complaint fails to state a claim
9 upon which relief may be granted.

10 2. **Legitimate non-discriminatory reasons.** Defendants
11 undertook all actions challenged by Plaintiff for legitimate, non-
12 discriminatory reasons.

13 3. **Failure to Exhaust.** Plaintiff's employment is governed by a
14 CBA, which includes mechanisms for reporting and grieving allegations of
15 conduct violating the CBA, and Plaintiff failed to fully exhaust the grievance
16 procedure under the CBA.

17 4. **Claims Exceed Scope of EEOC Charge.** To the extent that
18 the Complaint purports to assert any claim or allegation under Title VII or
19 the ADEA which was not the subject or within the scope of the individual
20
21

1 charge filed by Plaintiff with the EEOC, such claim is barred, in whole or in
2 part, for failure to fulfill the prerequisites to suit under those statutes.

3 5. **Good Faith.** The District may not be held liable for punitive,
4 exemplary and/or liquidated damage as it has undertaken a good faith effort
5 to comply with all applicable federal statutes and has not acted with reckless
6 indifference to Plaintiff's federally protected rights.

7 6. **Immunity.** Defendant Heimbigner is immune from civil
8 liability under RCW 54.12.110 as all actions were in the good faith
9 performance of acts within the scope of his official duties involving the
10 exercise of judgment and discretion which related solely to his
11 responsibilities for electrical utilities.

12 7. **Reservation.** The District reserves the right to assert additional
13 defenses and affirmative defenses to conform with the proof as discovery
14 progresses

15 **V. DEFENDANTS' PRAYER FOR RELIEF**

16 WHEREFORE, having fully answered the Complaint, Defendants'
17 respectfully request that:

- 18 1. The Complaint be dismissed with prejudice;
- 19 2. Defendants be awarded the costs, disbursements and attorneys'
20 fees they incur herein;
- 21

1 3. Defendants be granted permission to amend the Answer to
2 conform with the proof; and

3 4. Defendants be granted such other relief as this Court deems just
4 and equitable.

5 DATED this 18th day of December, 2017.

6 WINTERBAUER & DIAMOND PLLC

7 s/ Nate Bailey

8 Steven H. Winterbauer, WSBA #16468

9 Nate Bailey, WSBA #40756

10 Attorney for Defendants

11 Public Utility District No. 2 of Grant County
12 and Chris Heimbigner
13
14
15
16
17
18
19
20
21

